

REMARKS

Previous Rejection Maintained

The Examiner stated that the 102 rejection is respectfully maintained as set forth in the last Office Action mailed on October 4, 2006.

“Applicants' arguments with respect to claims 1-25 have been fully considered but they are not persuasive and the previous rejection is maintained.”

Applicant respectfully traverses the 102 rejection by clarifying the arguments below with further explanation.

Claim Rejections - 35 USC §102

Claims 1-12, 14-18, and 20-25 are rejected under 35 U.S.C. §102(e) as being anticipated by Dietz et al. (U.S. Patent No. 6,954,789, hereinafter “Dietz”).

Dietz discloses a monitor for and a method of examining packets passing through a connection point on a computer network. The method includes receiving a packet from a packet acquisition device and performing parsing/extraction operations on the packet to create a parser record comprising a function of selected portions of the packet. The parsing/extraction operations depend on the protocols to which the packet conforms. The method further includes looking up a flow-entry database containing flow-entries for previously encountered conversational flows. The lookup uses the selected packet portions and determining if the packet is of an existing flow. If the packet is of an existing flow, the method classifies the packet as belonging to the found existing flow, and if the packet is of a new flow, the method stores a new flow-entry for the new flow in the flow-entry database, including identifying information for future packets to be identified with the new flow-entry. For the packet of an existing flow, the method updates the flow-entry of the existing flow. Any stage of a flow, state is maintained, and the method performs any state processing for an identified state to further the process of identifying the flow. The method thus examines each and every packet passing through the connection point in real time until the application program associated with the conversational flow is determined.

The purpose of the claimed invention is to speed up processing of Internet messages by concurrent operation of a FIFO buffer and an expression matching circuit.

With regard to independent claims 1, 7-8, 14, 20, and 25, it is respectfully submitted that these independent claims, as exemplified in claim 1, include the limitation in combination that there is an incoming message that is processed in the expression matching circuit concurrent with the processing in the FIFO, and this limitation is not disclosed in Dietz:

“a First-In-First-Out (FIFO) buffer adapted to receive the incoming message and to assemble the incoming message from a serial to a parallel form; and
the regular-expression pattern matching circuit adapted to, concurrent with the assembly of the incoming message from a serial to a parallel form, recognize a Hypertext Transfer Protocol (HTTP) message header embedded in the incoming message, parse the recognized HTTP message header into a parsed HTTP message header, and provide the parsed HTTP message header to the server.”

Assuming *arguendo* that the FIFO buffer and expression matching circuit are the same as in the 35 USC §102 reference Dietz (USPN 6,954,789), Dietz has the expression matching circuit first and the FIFO buffer second for sequential operation. This may be seen in Dietz FIGs. 3 and 11 where the parser 301 feeds the analyzer 303. The Dietz expression matching circuit is in the parser 301 and the UFKB (buffer) is in the analyzer 303. Thus, the Dietz operations are sequential and not concurrent.

With reference to dependent claims 2-4, 6, 9-12, and 15-17, these dependent claims depend from independent claims 1, 7, 8, and 13, and are believed to be allowable since they contain all the limitations set forth in the independent claim from which they depend and claim additional unobvious combinations thereof

Based on the above, it is respectfully submitted that the independent claims 1, 7, 8, 14, 20, and 25, and the dependent claims depending therefrom, are not anticipated by Dietz under 35 USC §102(e) because:

“Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*” [*emphasis added*] Lindemann Maschinenfabrik GmbH v.

American Hoist & Derrick Co. (730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984)(citing Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983))).

Response to Arguments

The Examiner stated that Applicant's arguments with respect to claims 1-25 have been considered but are not deemed to be persuasive.

The Examiner states in the Office Action of 5/18/07 (hereinafter the "Office Action"):

"The claim merely recites concurrent and does not necessarily mean simultaneous or at exactly the same moment in time. Because a microprocessor can work with much smaller units of time than people can perceive, concurrent processes appear to be occurring simultaneously but in reality are not." [underlining for clarity]

Applicant respectfully disagrees and respectfully submits that the comment above is a sophistry because:

"Although the PTO must give claims their broadest reasonable interpretation, this interpretation must be consistent with the one that those skilled in the art would reach." *In re Cortright*, 165 F.3d 1353, 1358 (Fed. Cir. 1999), cited in *In re American Academy of Science Tech Center*, CAFC 03-1531, May 13, 2004.

Those having ordinary skill in the art would read the Specification, as supported by the Declaration, to mean that the term "concurrent" is used in the ordinary sense of the term and the Random House Webster's College Dictionary, p. 282, Random House Inc., c. 1996, 1995, 1992, 1991, defines concurrent as:

"1. occurring or existing simultaneously..."

Thus, the Examiner's underlined statement must be based on the Examiner's personal knowledge of how Applicant's invention operates so Applicant respectfully requests an Examiner Affidavit disclosing the Examiner's personal knowledge regarding this limitation pursuant to 37 CFR §1.104(d)(2) (2002):

"When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject

to contradiction or explanation by the affidavits of the applicant and other persons.”

The Examiner continues in the Office Action:

“Dietz receives the incoming message and applies serial to parallel conversion and the message may undergo the pattern matching while still going through the serial to parallel conversion. When a long message is received it passes through the serial to parallel conversion. While the end of the message is still going through the conversion the head of the message will undergo the pattern matching and in this case both operations are happening concurrently. Examiner maintains that Dietz assembly of the incoming message from serial to parallel form is occurring concurrently with the pattern matching of the message and thus meets the scope of the claimed limitation.”

Dietz does not support this statement and discloses sequential operation in Dietz by the subsystem 301 generating a signal which is subsequently used by the subsystem, as stated in Dietz col. 20, lines 12-21:

“Once all the patterns of elements have been hashed, processes 304, 306 and 312 of parser subsystem 301 are complete. Parser subsystem 301 has generated the signature used by the analyzer subsystem 303.

A parser record is loaded into the analyzer [303], in particular, into the UFKB in the form of a UFKB record which is similar to a parser record, but with one or more different fields.” [underlining and insertion for clarity]

If the Examiner believes that the Examiner’s statement is supported by Dietz, Dietz column and line number(s) are respectfully requested in accordance with 37 CFR §1.104(c)(2), which requires:

“In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.”[underlining for clarity]

In the absence of such support, it is respectfully submitted that the Examiner has failed to establish a *prima facie* case for anticipation of claims 1-25 under 35 U.S.C. §102(e) because:

“As adapted to *ex parte* procedure, Graham [v. John Deere Co.] is interpreted as continuing to place the ‘burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103.” [insertion and underlining for clarity] *In re*

Piasecki, 745 F.2d 1468, 223 USPQ 785, 788 (Fed. Cir. 1984), quoting *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 177 (C.C.P.A. 1967), *cert. denied*, 389 U.S. 1057 (1968).

Conclusion

In view of the above, it is submitted that the claims are in condition for allowance and reconsideration of the rejections is respectfully requested. Allowance of claims 1-25 at an early date is solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including any extension of time fees, to Deposit Account No. 08-2025 and please credit any excess fees to such deposit account.


Respectfully submitted,



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I hereby certify that this document is being electronically transmitted to the U.S. Patent and Trademark Office via EFS from the Pacific Time zone on August 20, 2007.


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